

NOTICE AND AGENDA SPECIAL FARMINGTON CITY COUNCIL MEETING

NOTICE is hereby given that the Farmington City Council will hold a special meeting on Tuesday, November 12, 2013, at 6:00 p.m. at the Farmington City Hall, 160 South Main Street, Farmington, Utah.

The agenda for the meeting shall be as follows:

Roll Call (Opening Comments/Invocation) Pledge of Allegiance

Convene as the Board of Canvassers

1. Canvass for General Election Results

Reconvene as the City Council

2. Property Acquisition for Community Park
3. Property Sale and Park Improvement Agreement with Utah School Development FC LLC

CLOSED SESSION

Minute motion adjourning to closed session for potential sale of property.

DATED this 8th day of November, 2013.

FARMINGTON CITY CORPORATION

By: Holly Gadd
Holly Gadd
City Recorder

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting, should notify Holly Gadd, City Recorder, 451-2383, prior to the meeting.



FARMINGTON CITY

SCOTT C. HARBERTSON
MAYOR

JOHN BILTON
CORY R. RITZ
CINDY ROYBAL
JIM TALBOT
JAMES YOUNG
CITY COUNCIL

DAVE MILLHEIM
CITY MANAGER

City Council Staff Report

To: Honorable Mayor and City Council

From: Holly Gadd, City Recorder

Date: November 8, 2013

Subject: **CANVASS FOR GENERAL ELECTION RESULTS**

RECOMMENDATION

By minute motion, approve the Farmington General Election results and sign the Board of Canvassers letter.

BACKGROUND


A General Election was held on November 5, 2013 to fill one (1) position for Mayor, one - 2 year City Council position and two – 4 year positions. The attached is the official election tabulation, which includes absentee ballots, early, vote-center ballots and valid provisional ballots.

In Utah Code 20A-3-309(3)(c) it states that the election officer may not release any results from absentee ballots that are counted after the date of the election through the date of the canvass. Therefore, the results will not be released until the meeting.

Respectfully Submitted


Holly Gadd
City Recorder

Review & Concur


Dave Millheim
City Manager



FARMINGTON CITY

SCOTT C. HARBERTSON
MAYOR

JOHN BILTON
CORY R. RITZ
CINDY ROYBAL
JIM TALBOT
JAMES YOUNG
CITY COUNCIL

DAVE MILLHEIM
CITY MANAGER

We, the Board of Canvassers, have reviewed the results of the Farmington City Election held on Tuesday, November 5, 2013, as have been presented to us and certify them to be the true and correct election results hereby signing our names this 12th day of November, 2013.

Scott C. Harbertson, Mayor

Cindy Roybal, Council Member

Jim Talbot, Council Member

Jim Young, Council Member

John Bilton, Council Member

Cory Ritz, Council Member



FARMINGTON CITY

SCOTT C. HARBERTSON
MAYOR

JOHN BILTON
CORY R. RITZ
CINDY ROYBAL
JIM TALBOT
JAMES YOUNG
CITY COUNCIL

DAVE MILLHEIM
CITY MANAGER

City Council Staff Report

To: Honorable Mayor and City Council

From: Dave Millheim, City Manager

Date: November 7, 2013

SUBJECT: **PROPERTY ACQUISITION FOR COMMUNITY PARK**

RECOMMENDATIONS

- Direct staff to prepare proper notices for the disposal of the old city public works building currently being leased to CenterCal as part of a purchase and sale agreement to R&T Investments, LLC.
- Direct staff to prepare a subdivision application with the City as the applicant to subdivide the old public works building site of 1.543 acres from the .763 acre parcel on the north side the City wishes to retain for the use of Public Works material storage.
- Direct staff to prepare a zoning application with the City as the applicant for a BP (Business Park) zone designation being placed on both the parcel the City retains (after subdivision) and the parcel with the building being sold to R&T Investments. The minutes should reflect the BP zone is recommended because it is consistent with the existing General Land Use Plan.
- Authorize the Mayor on behalf of the City to execute the attached purchase and sale agreement with R&T Investments for acquisition of property for a community park.
- Direct staff to prepare with Zions Bank the necessary documents for a lease purchase of \$1,200,000 which enables the City to use park impact fees for park acquisition as planned for in our park capital facilities plan.

BACKGROUND

Council has directed staff to make the large community park site on the West side of 650 West a priority as identified in the City's Park Facilities Plan. The City currently owns 21.5 acres for this purpose. Staff has been working for some time, under Council direction, on acquiring the abutting 21.95 acres currently owned by R&T Investments (Ron Lindorf). As part of the attached purchase and sale agreement, very shortly after

having this property under contract, the Council will be asked to approve a contract to sell the five most northerly acres just purchased to Utah School Development FC LLC, (USD) for the purposes of building a charter school. That parcel will only go under contract if USD agrees to construct some park development infrastructure contributions to be paid for by them and turned over to the city prior to occupancy of the said school. These include the construction of three new large play fields, two of which will be on city property, a shared public parking lot and street frontage improvements on the West side of 650 West. This will allow for the partial construction of the first phase of the community park improvements in 2014 plus a significant amount of funds (\$750,000) being earmarked to pay for additional park development costs.

This has been a lot of work and I thank all those who have assisted with advice and assistance.

Respectfully Submitted



Dave Millheim
City Manager

PROPERTY EXCHANGE AND PURCHASE AND SALE AGREEMENT

This **PROPERTY EXCHANGE AND PURCHASE AND SALE AGREEMENT** the "Agreement" is made and entered into as of the ____ day of November 2013, by and between **FARMINGTON CITY**, a Utah municipal corporation, hereinafter referred to as the "City," and, **R&T INVESTMENTS, L.C.**, a Utah Limited Liability Company, hereinafter referred to as "R&T."

RECITALS:

WHEREAS,

A. The City is the owner of approximately 1 acre of real property consisting of an existing building and surrounding land located at approximately 51 North 650 West, in Farmington City, Utah, which real property is more particularly described in Exhibit "A", attached hereto and incorporated herein by reference. The City represents that the property described in Exhibit "A" at closing will comply fully and in all respects with all laws of the City applicable thereto for its current use and that such use is allowed in the Business Park (BP) Zone of Farmington City.

B. R&T represents that it is the owner of three parcels totaling approximately 21.95 acres of real property located within Farmington City, at approximately 120 South 650 West, which real property is more particularly described in Exhibit "B", attached hereto and incorporated herein by reference.

C. R&T and the City are desirous of exchanging their respective properties as described in Exhibits "A" and "B," all upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated into the terms of this Agreement.

2. **Purchase of the City Property.** R&T does hereby agree to acquire the property owned by the City and described in Exhibit "A" and the City does hereby agree to sell, transfer, exchange, assign and convey that property to R&T for the consideration set forth below.

3. **Purchase of R&T Property.** The City hereby agrees to acquire the property owned by R&T and described in Exhibit "B" and R&T does hereby agree to sell, transfer, exchange, assign and convey that property to the City for the consideration set forth below.

4. **Consideration.** In consideration for the exchange of properties as set forth herein, and based on the differences in value, the City hereby agrees to pay R&T the sum of One

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Million, Three Hundred Eighty Five Thousand Dollars, (\$1,385,000). Payment of the purchase price shall be paid by the City to R&T in lawful money of the United States and in accordance with all the provisions of this Agreement at Closing.

5. **Contingencies.** This Agreement shall be subject to and contingent upon satisfaction of the following conditions (the "Contingencies"):

a. The formal approval of this Agreement, already signed by R&T Investments, by the Farmington City Council;

b. The City's completion of the subdivision process to create a legal lot which can be exchanged and conveyed by the City to R&T, and as described in Exhibit A; and

c. The re-zoning of the property described in Exhibit A to the Business Park (BP) Zone of Farmington City prior to Closing.

6. **Current Leasehold Interest.** The Property described in Exhibit "A" is currently subject to a month to month lease agreement between the City and CenterCal Station Park LLC. The City hereby represents that as of the date of Closing, based on a current inspection of the Property, that the Property described on Exhibit "A" is fit for, and is in compliance with, all applicable laws, for the uses of the tenant. The parties hereby agree that subject to the terms of that Lease Agreement, attached hereto as Exhibit "D," R&T shall be allowed to assume the property subject to the terms of that Lease and continuation of the Lease shall be at R&T's sole discretion. The City hereby agrees to execute an assignment of Lease in a form prepared by R&T and approved by the City, such approval not to be unreasonably withheld, at R&T's request.

7. **Closing.** Time is of the essence to this Agreement. Closing shall take place upon satisfaction of all Contingencies, and the satisfaction of the further conditions set forth below:

A. Buyer and Seller have signed and delivered to each other or to Backman Title Company (the "Closing Office"), or such other office as the parties shall hereafter agree, all documents required by this contract, by written escrow instructions or by applicable law;

B. Any monies required to be paid by the City under these documents have been delivered by the City to R&T or to the Closing Office in the form of collected or cleared funds;

C. Any monies required to be paid by R&T under these documents have been delivered by R&T to the City or to the Closing Office in the form of collected or cleared funds; and

Closing shall occur on or before November 22, 2013, unless that date is extended by mutual written agreement of the parties.

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8. **Deeds.** At Closing, each party shall deliver to the other a duly executed and acknowledged special warranty deed for the real property to be conveyed by that party. The transaction will be considered "Closed" when the applicable closing documents have been recorded in the office of the Davis County Recorder.

9. **Clear Title.** Each Party agrees to furnish to the other good and marketable title to the property conveyed by that party, evidenced by a current ALTA Standard Coverage owner's policy of title insurance in the amounts directed by the acquiring party. The City hereby agrees to order preliminary commitments on each property and to pay the cost of such preliminary reports. All taxes and assessments assessed on the properties after the date of closing shall be the responsibility of the party acquiring said property. Each party shall pay all taxes and assessments on the property to be conveyed by it prior to the date of closing. The parties each agree that the conveyance of the properties to the other shall be free and clear of all liens and encumbrances except those accepted by the other party in writing. The parties hereby agree to create no liens and encumbrances on the properties after the date of this Agreement and hereby agree to hold the other, and its agents and officers harmless from any and all liens and encumbrances and claims or rights therefrom. The City shall request preliminary title reports on the respective properties within three (3) days of the date of this Agreement. Prior to closing, each party shall notify the other in writing of any title objections. The notified party shall thereafter cure the title defects to which the notifying party has objected prior to closing.

10. **Notice.** Any notice required or desired to be given pursuant to this Agreement shall be delivered personally or mailed by certified mail, return receipt requested, postage prepaid, to the parties as follows:


City: Farmington City
Attn: City Manager
160 North Main Street
Farmington, UT 84025

R&T: R&T Investments
Attn: Ron Lindorf
51 West Center Street, #604
Orem, UT 84057

The City and R&T may change their addresses by notice given as required above.

11. **Default.** If either party shall fail to comply with the terms of this Agreement, the non-defaulting party shall send written notice and provide a reasonable opportunity to cure, but not less than thirty (30) days. If the default is not cured within the time allowed, the defaulting party agrees to pay all reasonable attorney's fees and costs incurred by the non-defaulting party in enforcing its rights hereunder.

12. **Abrogation.** Except for any provision expressly surviving Closing, and the express warranties contained in this Agreement, recording of the Deeds from each party to the other shall abrogate this Agreement.


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13. **Successors and Assigns.** This Agreement shall bind each of the parties hereto and their respective heirs, personal representatives, successors and assigns.

14. **Entire Agreement.** This Agreement, with any exhibits incorporated by reference, constitutes the final expression of the parties' agreement and is a complete and exclusive statement of the terms of that agreement. This Agreement supersedes all prior or contemporaneous negotiations, discussions and understandings, whether oral or written or otherwise, all of which are of no further effect. This Agreement may not be changed, modified or supplemented except in writing signed by the parties hereto.

15. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

16. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one single agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first above written.

"CITY"

FARMINGTON CITY

ATTEST:

Holly Gadd, City Recorder

By: _____
Scott C. Harbertson, Mayor

"R&T INVESTMENTS"

By: 

Its: MANAGER

CITY ACKNOWLEDGMENT

STATE OF UTAH)
)
:SS.)
COUNTY OF DAVIS)

On the ____ day of _____, 2013, personally appeared before me Scott C. Harbertson, who being duly sworn, did say that he is the Mayor of Farmington City, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said Scott C. Harbertson acknowledged to me that the City executed the same.

Notary Public

R&T ACKNOWLEDGMENT

STATE OF UTAH)
)
:SS.)
COUNTY OF ^{Utah} DAVIS)

On the 8 day of Oct., 2013, personally appeared before me Ron Lindorf who being by me duly sworn did say that he is the Manager of R&T Investments, and that he signed the foregoing instrument on behalf of R&T Investments, and duly acknowledged that he executed the same.

Kaylene Casper
Notary Public



EXHIBIT A

Description of the “City Property”

Exhibit A

Beginning at a point on the East line of 650 West Street, said point being North $0^{\circ}39'35''$ West 681.79 feet along the Quarter Section Line and South $89^{\circ}53'00''$ East 106.35 feet and South $0^{\circ}12'49''$ West 186.94 feet from the Center of Section 24, Township 3 North, Range 1 West, Salt Lake Base and Meridian, Davis County, Utah and running thence South $89^{\circ}53'$ East 232.92 feet to a right-of-way monument; thence South $50^{\circ}09'15''$ East 100.02 feet; thence South $24^{\circ}26'24''$ East 123.06 feet to a right-of-way monument; thence continuing South $24^{\circ}26'24'$ East 39.92 feet to the Centerline of North Cottonwood Creek; thence along said centerline the following courses and distances: South $89^{\circ}19'44''$ West 9.05 feet, North $86^{\circ}45'31''$ West 7.32 feet, North $89^{\circ}29'53''$ West 117.65 feet, South $86^{\circ}50'29''$ West 48.96 feet, South $87^{\circ}42'34''$ West 48.86 feet, North $88^{\circ}43'43''$ West 53.09 feet, South $77^{\circ}07'01''$ West 13.63 feet to the East line of 650 West Street; thence North $0^{\circ}12'49''$ East 213.59 feet to the point of beginning, containing 1.543 acres.

EXHIBIT B

Description of the “R&T Property”

Exhibit B

Boundary Description as per Great Basin Survey 2006, including gap

A part of the West Half of Section 24, Township 3 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey, more particularly described as follows:

Beginning at a point on the Section line and the West right of way line of 650 West Street, which is 1197.24 feet South0°06'01"East along said Section line and right of way line from the Center of said Section 24; (Basis of Bearing being a line bearing South89°52'28"West between the Center and the West Quarter Corner of Section 24) and running thence South0°06'01"East 115.34 feet along said Section Line and right of way line; thence South89°43'59"West 188.83 feet; thence North0°06'01"West 115.34 feet; thence South89°43'59"West 1073.09 feet to the center of North Cottonwood Creek; thence North40°30'54"East 848.09 feet; thence South0°06'01"East 0.66 feet; thence North38°00'01"East 147.33 feet; thence North27°08'33"East 98.61 feet; thence North32°22'30"East 318.26 feet; thence North50°30'09"East 294.54 feet along said centerline of North Cottonwood Creek to the South right of way line of Clark Lane; thence Southeasterly along said right of way line and the arc of a 475.00-foot radius curve to the left for a distance of 23.72 feet, (central angle = 02°51'40" and long chord bears South72°01'49"East 23.72 feet) to the intersection of said South right of way line of Clark Lane and a project known as Project No.0067; thence Southeasterly two (2) courses along said project as follows: along the arc a 1915.87-foot radius curve to the left a distance of 123.05 feet, (central angle = 03°40'48" and long chord bears South60°36'10"East 123.03 feet); South04°48'25"East 556.31 feet to the Section line and the West right of way line of 650 West Street; thence South0°06'01"East 676.14 feet along said Section line and West right of way line to the point of beginning, containing 21.768 acres.



28 Nov, 2008
A. EIT M. A.
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GREAT BASIN ENGINEERING NORTH
CONSULTING ENGINEERS AND SURVEYORS
5748 South 1475 East - Suite 200
Ogden, Utah 84403
Box 18007, Ogden, Utah 84415



FARMINGTON CITY

SCOTT C. HARRINGTON
MAYOR

JOHN BILTON
CORY R. RITZ
CINDY ROYBAL
JIM TALBOT
JAMES YOUNG
CITY COUNCIL

DAVE MILLHEIM
CITY MANAGER

November 7, 2013

R&T Investments
Attn: Mr. Ron Lindorf
51 West Center Street, #604
Orem, Utah 84057

Re: Addendum to Property Exchange and Real Estate Purchase Agreement

Dear Mr. Lindorf;

This letter is intended to serve as an Addendum to the certain Property Exchange and Real Estate Purchase Agreement between R&T Investments and Farmington City. The Addendum addresses items relating to the condition of the Property to be conveyed by Farmington City to you, including the building located on the Property.

The City hereby agrees as follows:

1. The Utah Department of Transportation ("UDOT") owns a small parcel of property ("the UDOT Property") located between the City property described on Exhibit A and the public street. UDOT has committed to convey the UDOT property to the City, and the City has initiated the process to acquire that parcel of property from UDOT and hereby agrees to convey that property by quitclaim deed to R&T upon acquisition of the same. The UDOT property has been crossed to gain access to the property described on Exhibit A for a period in excess of ten years and UDOT officials have represented to the City Manager, the access to the building will not be restricted from 650 West. In the event UDOT at any point takes any action to hinder, obstruct or prevent access to the Property described in Exhibit A, the City agrees to take all necessary action to acquire the UDOT property and access for R&T, including, if necessary, the exercise of the City's eminent domain authority, and to indemnify R&T against any loss or damages incurred as a result of such action by UDOT;
2. To fill or cause to be filled the potholes existing in the drive entrance to the Property and in the parking lot;
3. To repair the swinging gate and lock on the North side of the Property;

mw
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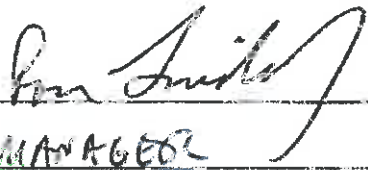
4. To repair all non-working electrical fixtures in the building including all lighting inside the building (to include replacing any non-working bulbs) and all lighting outside the building; and
5. To repair any non-functioning sprinklers on the Property.

In addition to the foregoing, the City hereby agrees to have its building inspector conduct an inspection of the building to assure that there are no conditions that currently exist in the building that violate applicable building codes relating to public health and safety and to certify, in writing, that the building is fit for its current use. The assurances of that written certification shall survive the Closing of this transaction. R&T shall conduct a final walk through of the building prior to closing to assure that all repairs have been completed. The walk through shall occur within five days of notice from the City, but not later than November 15, 2013. Nothing herein shall be construed to require the City to correct any unknown condition which is legally non-conforming.

The parties, by their signatures below, hereby indicate their agreement with the provisions of this Addendum.

Dated this 8 day of November, 2013.

R&T Investments

By: 

Its: MANAGER

Farmington City

Mayor Scott T. Harbertson

Attest: Holly Gadd, City Recorder



FARMINGTON CITY

SCOTT C. HARBERTSON
MAYOR

JOHN BILTON
CORY R. RITZ
CINDY ROYBAL
JIM TALBOT
JAMES YOUNG
CITY COUNCIL

DAVE MILLHEIM
CITY MANAGER

November 7, 2013

Ron Lindorf
51 West Center St. #195
Orem, Utah 84057

Re: Fit For Occupancy (Parcel ID# 080870171)
42 North 650 West
Farmington, Utah 84015

Dear Mr. Lindorf:

I have conducted a walk through inspection of the Farmington City Building located at 42 North 650 West, Farmington Utah (Davis County Tax I.D. # 080870171). During my inspection I did not witness any building code violations regarding public health and safety. This building is ready and fit for occupancy for the same type of occupancy used since the building had been constructed. If you should have any question please feel free to contact me at 801-939-9219.

Sincerely

Eric Miller
Chief Building Official



FARMINGTON CITY

SCOTT C. HARBERTSON
MAYOR

JOHN BILTON
CORY R. RITZ
CINDY ROYBAL
JIM TALBOT
JAMES YOUNG
CITY COUNCIL

DAVE MILLHEIM
CITY MANAGER

City Council Staff Report

To: Honorable Mayor and City Council

From: Dave Millheim, City Manager

Date: November 7, 2013

SUBJECT: **PROPERTY SALE AND PARK IMPROVEMENT AGREEMENT
WITH UTAH SCHOOL DEVELOPMENT FC LLC**

RECOMMENDATIONS

- Direct staff to prepare proper notice for the disposal of five acres recently acquired from R&T Investments located on the west side of 650 West and south of Clark Lane.
- Direct staff to prepare a boundary adjustment application with the City as the applicant for the same five acres to be considered by the Planning Commission on December 12, 2013.
- Authorize the Mayor to execute the attached Real Estate Purchase and Sale Agreement with Utah School Development FC LLC or USD. The minutes should reflect as a condition of this sale USD has agreed at their expense to construct three additional large recreation fields (one on their property and two on the abutting city park property), a large shared public parking lot and all public improvements required for the west side of 650 West subject to city standards. The parties will sign a cross use easement agreement to be prepared for the shared use of the play fields and parking lot AND the said improvements will be constructed by USD at their expense prior to USD receiving a certificate of occupancy for their school.
- Direct staff to identify the \$750,000 received from the sale of the five acre site to be used for future park acquisition and development costs.

BACKGROUND

Council has directed staff to make the large community park site on the West side of 650 West a priority as identified in the City's Park Facilities Plan. The City currently owns 21.5 acres for this purpose. The City is has also approved executing a contract with R&T Investments for the acquisition of the abutting 21.95 on the north side of the city parcels.

This purchase is scheduled to close on or before November 22, 2013. Staff has negotiated with USD to sell the five most northerly acres just purchased from R&T Investments to Utah School Development FC LLC, (USD) for the purposes of building a charter school. The terms and conditions of this sale are outlined in the attached contract and the above recommendations. This sale will allow for the partial construction of the first phase of the large community park improvements in 2014 plus a significant amount of funds (\$750,000) being earmarked to pay for additional park development costs.

This has been a lot of work and I thank all those who have assisted with advice and assistance. Both this action and the recent purchase of the R&T Investments ground demonstrate a significant commitment on the part of the City towards a large community park in the heart of Farmington which will be used for generations to come.

Respectfully Submitted



Dave Millheim
City Manager

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS SALE AND PURCHASE AGREEMENT ("Agreement") is made and entered into as of the 07 day of November, 2013 by and between **FARMINGTON CITY**, hereinafter referred to as the "City," and **UTAH SCHOOL DEVELOPMENT FC LLC**, a Utah limited liability company, hereinafter referred to as "USD"

RECITALS:

A. The City is in contract to purchase approximately five (5) acres of real property consisting of vacant land, located in Farmington City, Utah, which real property is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (the "Property").

B. Upon acquisition of the Property, the City is desirous of selling the Property to USD and USD desires to purchase the Property from the City, all upon the terms and conditions hereinafter set forth.

C. The City, as a public entity of the State of Utah, has determined that, pursuant to Section 3-06-110 of the *Farmington City Municipal Code*, the sale of the Property by means of a negotiated sale, with additional consideration being provided to the City in the form of assisted development with a public park parcel is in the public interest and provides the greatest value and the greatest public benefit.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Sale and Purchase Price.** For the sum of Seven Hundred Fifty Thousand Dollars (\$750,000), payable by USD to the City in lawful money of the United States, and for other good and valuable consideration as set forth in paragraph 2, below, the City does hereby agree to sell, transfer, assign and convey, and USD does hereby agree to purchase the Property. On the date of this Agreement, USD shall pay to an escrow account established at Backman Title Company the purchase price which shall be paid to the City at Closing.

2. **Additional Consideration.** In addition to the monetary consideration for the sale of the Property, USD hereby agrees to construct those certain improvements more particularly shown on Exhibit "B," attached hereto and incorporated herein by reference, (the "Improvements"). The Improvements consist of some athletic fields to be constructed on City owned property immediately adjacent south of the property described in Exhibit A and a shared parking lot on both City property and the USD property. The Improvements shall be constructed in a good and workmanlike manner and in accordance with customary construction standards and practices. The engineered drawings for those Improvements shall be prepared by USD and subject to approval by the City prior to construction. The parties hereby specifically acknowledge that USD intends to construct and operate a Charter School on the Property, and that part of the Improvements include the construction of a parking lot that will be a shared facility for USD and the City to support the School and the City's intended use of the property adjacent to the Property for a public park and related facilities. The

parties hereby agree to enter into that certain Reciprocal Use Easement Agreement, attached hereto as Exhibit "C," and incorporated herein by reference. USD hereby agrees that construction of all the Improvements shall be completed at USD's sole cost on or before that date which is one year from the date of Closing, as set forth below. USD further acknowledges that no certificate of occupancy shall be issued for the school, and USD agrees not to occupy the school until such Improvements are completed and in warranty with the City. USD specifically affirms that the construction of the Improvements has bargained for as an item of additional consideration for the sale of the property and that the agreement to construct the Improvements does not violate the provisions of *Utah Code Annotated* §10-9a-305. The parties further specifically affirm and acknowledge that nothing herein shall be deemed a grant of land use approval for the construction of the intended School and that such approvals shall remain a matter of the administrative land use approval process of the City. The provisions of this Paragraph shall not be abrogated by the recording of a deed for the Property and shall survive the Closing of this transaction.

3. **Closing.** Time is of the essence to this Agreement. Closing shall take place on or before December 16, 2013, or at such other date which USD and the City shall agree in writing. Closing shall occur only when all of the following have been completed: (a) USD and the City have signed and delivered to each other or to Backman Title Company (the "Closing Office"), or such other office as the parties shall hereafter agree, all documents required by this Contract, by written escrow instructions or by applicable law; (b) any monies required to be paid by USD under these documents have been delivered by USD to the City or to the Closing Office in the form of collected or cleared funds; (c) any monies required to be paid by the City under these documents have been delivered by the City to USD or to the Closing Office in the form of collected or cleared funds; and (d) all contingencies set forth in paragraph 7, below, have been satisfied. At Closing the City shall deliver to USD a duly executed and acknowledged Special Warranty Deed for the Property. The transaction will be considered "Closed" when the applicable closing documents have been recorded in the office of the Davis County Recorder.

4. **Title Insurance.** Seller agrees to furnish good and marketable title to the Property, evidenced by a current ALTA standard-coverage owner's policy of title insurance in the amount of the Purchase Price. The City hereby agrees to order a preliminary commitment for a policy of title insurance to be issued by Backman Title Company. A copy of the preliminary commitment shall be delivered to USD by the City within ten (10) days of the execution of this Agreement. USD shall give written notice to the City specifying reasonable objections to title within three business days of delivery of the preliminary commitment. Thereafter, the City shall be required, through escrow at closing to cure the defects to which USD has reasonably objected. The Title Policy to be issued shall contain no exceptions other than those provided for in said standard form. If title cannot be made so insurable through an escrow agreement at closing, the escrowed purchase price shall, unless USD elects to waive such defects or encumbrances, be refunded to USD, and this Agreement shall thereupon be terminated. USD agrees to pay any cancellation charge.

5. **Warranties of Seller.** The City warrants that all obligations against the Property including taxes, assessments, mortgages, liens or other encumbrances of any nature shall be brought current on or before Closing. No other representations have been made by the City to USD.

6. **Prorations.** The City and USD shall each pay one-half (1/2) of the escrow closing fee. Costs of providing title insurance shall be paid by the City. USD shall be responsible for recording costs for the special warranty deed.

7. **Contingencies.** This Purchase Agreement is contingent on the following:

a. The City's acquisition of the Property under the terms of the present contract for its purchase;

b. Formal approval of the terms of this Agreement by the Farmington City Council;

c. USD's physical inspection of the Property and acceptance of the same, in the USD's discretion; and

d. Compliance with the applicable land use Ordinances of the City, including the subdivision of the City's property, and site plan approval for the proposed Charter School.

8. **Notices.** Any notice required or desired to be given pursuant to this Agreement shall be delivered personally or mailed by certified mail, return receipt requested, postage prepaid, to the parties as follows:

The City: Farmington City
Attn: City Manager
160 North Main Street
Farmington, Utah 84025

USD: Utah School Development
Attn: Gabriel Clark
352 North Flint Street, Suite A
Kaysville, Utah 84315

The Buyer and Seller may change their addresses by notice given as required above.

9. **Default.** If Buyer defaults, Seller may proceed to exercise any remedies at law it may have. If Seller defaults, Buyer may elect to sue Seller for specific performance and/or damages. Under no circumstance shall the escrowed funds be deemed an earnest money deposit or liquidated damages.

10. **Abrogation.** Except for those paragraphs in this Agreement expressly surviving the Closing, and the express warranties contained in this Agreement, execution and delivery of the final closing documents shall abrogate this Agreement.

11. **Successors and Assigns.** This Agreement shall bind each of the parties hereto and their respective heirs, personal representatives, successors and assigns.

12. **Entire Agreement.** This Agreement, with any exhibits incorporated by reference, constitutes the final expression of the parties' agreement and is a complete and exclusive statement of the terms of that agreement. This Agreement supersedes all prior or contemporaneous negotiations, discussions and understandings, whether oral or written or otherwise, all of which are of no further effect. This Agreement may not be changed, modified or supplemented except in writing signed by the parties hereto.

13. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

14. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one single agreement. Facsimile transmission of any signed original document, and the retransmission of any signed facsimile shall be the same as delivery of an original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement individually or by and through their respective, duly authorized representatives as of the day and year first above written.

"USD"

Utah School Development FC, LLC

By: SHARON KINBACK

Its: MANAGER

"Farmington City"

By: _____
Scott C. Harbertson, Mayor

Attest: _____
Holly Gadd, City Recorder

CITY ACKNOWLEDGMENT

STATE OF UTAH)
 :SS.
COUNTY OF DAVIS)

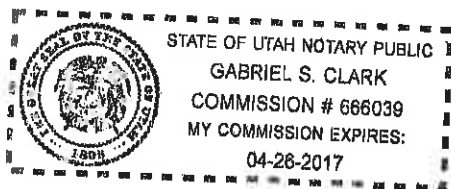
On the ____ day of November, 2013, personally appeared before me Scott C. Harbertson, who being duly sworn, did say that he is the Mayor of **FARMINGTON CITY**, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said Scott C. Harbertson acknowledged to me that the City executed the same.

Notary Public

UTAH SCHOOL DEVELOPMENT FC LLC ACKNOWLEDGMENT

STATE OF UTAH)
 :SS.
COUNTY OF DAVIS)

On the 7th day of November, 2013, personally appeared before me Sheldon Killpack who being duly sworn, did say that he/she is the Manager of Utah School Development LLC, and that he/she signed the foregoing Agreement in behalf of said entity, with proper authority, and duly acknowledged to me that he/she executed the same.



Notary Public

EXHIBIT "A"

Purchase and Sale Agreement Legal Description

EXHIBIT "A"

Beginning at the Center of Section 24, Township 3 North, Range 1 West, Salt Lake Base and Meridian, Davis County, Utah and running thence South $0^{\circ}05'50''$ East 488.83 feet along the Quarter Section Line; thence South $90^{\circ}00'00''$ West 343.49 feet; thence North $0^{\circ}00'$ East 103.92 feet; thence South $90^{\circ}00'00''$ West 207.81 feet; thence North $27^{\circ}19'29''$ East 82.95 feet; thence North $32^{\circ}14'05''$ East 89.62 feet; thence North $33^{\circ}50'00''$ East 102.34 feet; thence North $42^{\circ}21'52''$ East 130.29 feet; thence North $55^{\circ}08'15''$ East 104.10 feet; thence North $49^{\circ}18'56''$ East 159.45 feet to the property shown on the Dedication Plat of State Street and Clark Lane and a point on the arc of a 450.00-foot radius curve to the left; thence Easterly along the arc of said curve and road for an arc distance of 93.26 feet, (central angle = $11^{\circ}52'26''$, chord bearing and distance=South $83^{\circ}38'36''$ East 93.09 feet; thence South $89^{\circ}34'39''$ East 20.75 feet; thence South $0^{\circ}07'40''$ East 98.85 feet to the point of beginning, containing 5.00 acres.

